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Supreme Court, U.S.
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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1982

LUKE WILLIAM ABLE, JR. doing business as the Criminal Defense Clinic; Able Bail, Defense and Divorce Clinic; and Able Bail and Defense Clinic,

Appellant,

v.

THE STATE OF TEXAS; JACK HEARD; C.R. GAINES; and HARRIS COUNTY,

Appellees.

JURISDICTIONAL STATEMENT ON APPEAL FROM THE COURT OF APPEALS FOR THE FIRST SUPREME JUDICIAL OF TEXAS

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QUESTIONS PRESENTED ON APPEAL

1. Whether the Sheriff's refusal to continue to honor appellant's bail bonds solely because of his advertising during the long period this case will be pending justifies a temporary order enjoining the refusal until due process is provided.

2. Whether the summary imposition of sanctions by a state's sheriff on an attorney without notice or any adversary proceeding solely because the attorney advertised his privilege granted by the state of executing his client's bail bonds constitutes an improper restraint on free speech protected by the First Amendment and a denial of the due process and equal protection of the law guaranteed by the First, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

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Appellees.

JURISDICTIONAL STATEMENT
ON APPEAL FROM THE COURT OF APPEALS FOR THE FIRST SUPREME JUDICIAL DISTRICT OF TEXAS

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Luke William Able, Jr., by his attorney respectfully prays that the Court review the judgment of the Court of Appeals for the First Supreme Judicial District of Texas entered on February 25, 1982.

OPINIONS BELOW

The Court of Appeals for the First Supreme Judicial District of Texas affirmed the denial of a temporary injunction by the District Court of Harris County, Texas, 11th Judicial District, in an unpublished opinion filed February 25, 1982. No other opinions have been written in this matter.

STATEMENT OF JURISDICTION

Pursuant to 42 U.S.C. §1983, appellant sued in state court for a judgment that sections 15 (d) and 4 of Article 2372p-3 of the Texas Revised Civil Statutes Annotated (hereinafter called either the Bail Bond Act or the Act) are unconstitutional after his statutory privilege to execute bail bonds for his clients was summarily terminated by the Harris County Sheriff's Department because the appellant advertised bail bond services. Appellant further sought a temporary injunction to permit him to

continue executing bail bonds for his clients pending a trial or a conviction, a permanent injunction, damages, and attorney fees. After the district court received evidence and denied the temporary injunction, an appeal was taken.

The judgment and opinion of the Court of Appeals for the First Supreme Judicial District of Texas (hereinafter referred to as the Court of Appeals) sought to be reviewed was dated and filed February 25, 1982. A timely motion for rehearing was overruled by the Court of Appeals on April 22, 1982. A timely application for writ of error to the Supreme Court of Texas was dismissed for want of jurisdiction on July 21, 1982 and a timely motion for rehearing of that dismissal was overruled on October 6, 1982. The judgment of the Court of Appeals became final for purposes of appeal when rehearing was denied on October 6, 1982. Market S.R. Co. v. Railroad Com. of California, 324 U.S. 548,

65 S.Ct. 770, 89 L.Ed. 1171 (1945) reh den 324 U.S. 890, 65 S.Ct. 1020, 89 L.Ed. 1438. The Notice of Appeal to the Supreme Court of the United States was filed in the Court of Appeals on November 2, 1982. It was also filed in the Supreme Court of Texas on November 4, 1982.

The Supreme Court of the United States has jurisdiction under 28 U.S.C. §1257(2) to review this case. This case is final for purposes of Supreme Court review pursuant to the Court's decisions in New York v. Cathedral Academy, 434 U.S. 125, 128 n.4, 98 S.Ct 340, 343 n.4, 54 L.Ed.2d 346 (1977), National Socialist Party of America v. Village of Skokie, 432 U.S. 43-44, 97 S.Ct. 2205-2206, 53 L.Ed.2d 96 (1977), Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 478-480, 95 S.Ct. 1029, 1037-1038, 43 L.Ed.2d 328 (1975) and Organization for a Better Austin v. Keefe, 402 U.S. 415, 418 n.1, 91 S.Ct. 1575, 29 L.Ed.2d 1, 5 n.1 (1971).

The contention that the denial of the temporary injunction will deprive appellant of substantive and procedural First and Fourteenth Amendment rights during the pendency of this case is "separable from, and collateral to" the merits of whether the advertising is protected speech. The decision of the Court of Appeals of Texas is final on this separable issue and the Supreme Court of the United States has jurisdiction to review said court's decision in accordance with 28 U.S.C. §1257. National Socialist Party of America v. Village of Skokie, 432 U.S. 43, 44, 97 S.Ct. 2205, 2206, 53 L.Ed.2d 96 (1977).

The Court of Appeals of Texas also found the evidence did not show any violation of appellant's "free speech rights". Since there is only one standard for making such a decision, the same

standard will be applied at the trial on the merits. It is highly unlikely that the appellant will produce better evidence that the sanctions are solely because of his advertising than the two letters from the appellees already considered in the courts below which admit this fact. Further proceedings cannot remove or affect this threshold federal constitutional issue. New York v. Cathedral Academy, 434 U.S. 124, at 128 n.4, 98 S.Ct. 340, at 343 n.4, 54 L.Ed.2d 346 (1977); Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, at 478-480, 95 S.Ct. 1029, at 1037-1038, 43 L.Ed.2d 328 (1975).

This summary refusal to honor bail bonds on which appellant appears as a surety solely because of his advertising has been continuing for almost two years. Under these circumstances the Supreme

Court of the United States has jurisdiction by reason of 28 U.S.C. §1257 to review all these constitutional issues involving "free speech" which the state court of appeals decided. Organization for a Better Austin Keefe, 402 U.S. 415, at 418 n.1, 91 S.Ct. 1575, 29 L.Ed.2d. 1, at 5 n.1 (1971).

Extreme economic damage to the appellant is continuing as a direct result of sanctions applied without procedural due process solely because of speech-related conduct.

It will take approximately five years for this case to be reached for trial on the crowded docket of the civil district courts for Harris County, Texas.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. United States Constitution - First Amendment.

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

2. United States Constitution - Fifth Amendment.

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

3. United States Constitution-Sixth Amendment.

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

4. United States Constitution-Fourteenth Amendment, Section 1.

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person or life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

5. The Bail Bond Act, Texas Revised

Civil Statutes Annotated, Article 2372p-3 (as enacted in 1973, and amended in 1979.) This Act was amended in 1981, however, the 1981 amendments are not involved in this case. The entire Act is set forth in Appendix D.

> Section 2. In this Act;
> ....
> (3) "Bondsman" means any person who for hire or for any compensation deposits any cash or bonds or other securities, or executes as surety any bond for other persons, as many as five times in any 12-month period.
>
> Section 3.
> ....
> (b) Persons who are actually engaged in the practice of law and who are members of the State Bar of Texas who personally execute bail bonds or act as sureties for persons they actually represent in criminal cases may execute bail bonds without being licensed under this Act, but they are prohibited from engaging in the practices made the basis for revocation of license under this Act, and, if found guilty of violating the terms of this Act, may not qualify thereafter under the exception

provided in this subsection.

(c) The provisions of this Act do not apply to the execution of bail bonds in counties having a population of less than 110,000 according to the last preceding federal census.

....

Section 4.

A sheriff may examine under oath any proposed bondsman, or an officer or attorney of any company proposing to execute a bond, as to the indemnity, if any, deposited or otherwise provided directly or indirectly against loss by reason of the bond, and may refuse to accept the bond if, in the exercise of his discretion, he is satisfied that the security is insufficient, any portion of the security has been feloniously obtained, or the provisions of this Act have been violated.

....

Section 15.

....

(d) No person may advertise as a bondsman who does not hold a valid license under this Act. Provided, however, any second or subsequent violation shall be punishable as provided by Subsection (g) of this section.

(e) Any person who violates a provision of this section commits a misdemeanor punishable by a fine of not more than $500.

(g) Any person who violates subsection (f) of this section shall be guilty of a misdemeanor punishable by a fine of not more than $1000. or confinement in the county jail for not more than one year or both.

STATEMENT OF THE CASE

Appellant, Luke William Able, Jr. is an attorney licensed to practice law in the State of Texas. Prior to the events leading to this case, his practice consisted primarily of criminal defense work and was conducted under several different "clinic" names. In the course of his law practice, appellant routinely executed bail bonds for his clients as authorized by §3(b) of the Bail Bond Act. Appellant advertised the fact that he executed bail bonds in the yellow pages of various telephone books in the greater Houston area under the headings "Attorneys" and "Bonds-Bail".

On or about February 12, 1981, appellee

C.R. Gaines, a Harris County deputy sheriff, questioned the appellant's advertising. Appellant maintained he was acting lawfully. Appellee Gaines requested a formal opinion from the Harris County District Attorney's Office.

On March 3, 1981, in a written opinion admitted below, the district attorney concluded that any advertising under the heading "Bonds-Bail" in a telephone book's yellow pages constituted the misdemeanor offense of advertising "as a bondsman" in violation of §15 (d) of the Act. The district attorney also concluded that it was lawful for an attorney to advertise his ability to execute bail bonds in the same telephone directory under the heading "Attorneys". Section 15 (d) does not contain any restrictions about the place or form of advertising in its text. It was enacted in 1973 at a time when all advertising by attorneys was prohibited.

Appellee Gaines then wrote appellant a letter which was admitted below. He quoted the district attorney's conclusion that section 4 of the Bail Bond Act gave the sheriff the discretion to refuse to permit an attorney to execute his client's bail bonds if the sheriff was satisfied the attorney was violating the Act by advertising as a bondsman. This letter informed appellant he would no longer be permitted to execute bail bonds in Harris County under the Act's attorney exception. The Harris County Sheriff's Department has refused to allow appellant to execute his client's bail bonds, and has also refused to certify the adequacy of appellant's security to other counties, thereby effectively destroying appellant's small bail bond business in neighboring counties not subject to the Bail Bond Act.

Appellant brought this action in the District Court for Harris County, Texas,

11th Judicial District, pursuant to 42 U.S.C. §1983, seeking relief which included temporary and permanent injunctions permitting him to execute bail bonds for his clients; damages; and a declaratory judgment that the relevant sections of the Act are void and unconstitutional. Appellant's petition asserted his First Amendment right to advertise as well as his rights to procedural due process, a trial using criminal procedure, and equal protection guaranteed by the United States Constitution. The vagueness of §15 (d) of the Act was made another basis for relief in the petition.

The trial court failed to address the constitutional issues. It found the appellant had not presented evidence of a probable right to continue to act as a surety on bail bonds under the presumedly valid Bail Bond Act, and, therefore, temporary relief was denied.

On appeal to the Court of Appeals

for the First Supreme Judicial District of Texas, appellant reasserted his constitutional rights. His case in the Court of Appeals included the following arguments:

1. That TRUTHFUL ADVERTISEMENTS of a service are protected by the First Amendment;

2. That the state's conduct was a PRIOR RESTRAINT ON SPEECH which lacked the procedural safeguards required by the First Amendment;

3. That §15 (d) was VOID FOR VAGUENESS under the United States Constitution;

4. That summary punishment for a crime violated appellant's right to TRIAL BY JURY and other rights constitutionally guaranteed each citizen of the United States whom the state wishes to punish for an alleged crime;

5. That allowing a sheriff to make judicial determinations violated the SEPARATION OF POWERS principle which is a foundation of constitutional law and Anglo-

American jurisprudence;

6. That the Bail Bond Act failed to provide PROCEDURAL DUE PROCESS and EQUAL PROTECTION to attorneys;

7. That the Bail Bond Act was constitutional only if the Court of Appeals read section 3(b) as requiring that an attorney be convicted of a violation of the Act before sanctions could be applied; and

8. That the trial court abused its discretion.

Basing its decision on the presumed validity of the Bail Bond Act, the Court of Appeals affirmed the trial court's denial of the temporary injunction, stating in its opinion that appellant had not established a probable right to prevail at the trial on the merits. The Court of Appeals concluded the appellant had not "raised" or "presented" evidence of "any violation of his free speech rights" in spite of the undisputed evidence in the record both,

(a) that the dispute was entirely over advertising, and

(b) that a harsh sanction had been imposed without any notice, adversary proceeding, hearing, or any sort of procedural safeguards solely because of advertising.

The Court of Appeals tried to find a knowing and voluntary waiver by appellant of a decision of the constitutional issues. In his opening statement, appellant was starting to tell the trial court that if he construed §3(b) of the Act as requiring that an attorney be duly convicted of a violation of the Act before his §3(b) exception to the license requirements of the Act could be revoked, then, there was no need to decide any of the complex constitutional issues. The trial court stopped the opening statement, so appellant was never able to state why decision of the constitutional issues might not be required.

A waiver of the constitutional questions involved was definitely not intended by the appellant.

At the conclusion of the trial testimony appellant made a vigorous argument that the Act was unconstitutional unless it was read as requiring that an attorney be convicted before his exemption could be revoked. Appellant argued all the points raised in the pleadings. Unfortunately, the court reporter did not record anything after the evidence was closed.

Following the trial and entry of the order denying relief, appellant made a written request for findings of fact and conclusions of law. These requests included requests that the trial court find appellant's pleaded constitutional rights under the First and Fourteenth Amendments to the United States Constitution had been violated. The requested findings also included a finding that appellant's right to a trial

by jury and the other constitutional rights enjoyed by criminal defendants generally in the United States had been violated. The trial court signed an order denying these requested findings and conclusions.

The effect of the Court of Appeals' decision was a denial of all the relief requested in appellant's petition. Appellant's constitutional rights have been seriously violated and these violations were not vindicated in the courts below. Appellant continues to suffer extreme economic damage as a result.

REASONS WHY THE QUESTIONS PRESENTED REQUIRE PLENARY CONSIDERATION FOR THEIR RESOLUTION

I. The Trial Court Abused Its Discretion By Denying Appellant A Temporary Injunction.

In this case appellant's statutory privilege to execute bail bonds under the Bail Bond Act was terminated without any

notice or adversary hearing simply by the sheriff's refusal to honor any further bail bonds where appellant appeared as a surety. The two letters in evidence clearly show this action was taken by the sheriff because of appellant's advertising. This advertising became useless after the sheriff summarily terminated appellant's ability to provide bail bonds to his clients. It was made useless because appellant could no longer provide the service he advertised.

The sheriff's refusal to honor any further bail bonds from appellant is just as much a restraint on appellant's speech as a court order commanding appellant not to advertise would be. It restrains the advertisements by rendering them useless, thereby chilling the exercise of a First Amendment freedom without any procedural safeguards or judicial proceedings at all.

The Court of Appeals held that no procedural safeguards whatsoever were

required and that the sheriff had complete discretion to stop honoring appellant's bonds due to his advertising.

The sheriff's action in refusing to honor appellant's bail bonds, which has been sanctioned by the lower court, will deprive appellant of the lawful exercise of his First Amendment free speech rights during the five or so years this case will take to be reached for trial. This action further amounts to abridgement by the state of appellant's First Amendment rights without due process. Restraints of this type on speech require strict procedural safeguards. Freedman v. Maryland, 380 U.S. 51, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965).

The appellant has been actively seeking to exercise his constitutional rights in a criminal prosecution which he has tried to get the state to institute. Appellant

also prayed the temporary injunction be ended by its own terms if he is convicted of a violation of §15 (d) in a state criminal case.

The record clearly shows appellant is suffering severe economic hardship as a result of not being allowed to execute bail bonds for his clients because of his advertising.

Appellant had a constitutional right simply to ignore §15 (d) of the Act unless he was convicted of violating it. Shuttlesworth v. City of Birmingham, 394 U.S. 147, at 151 and 160-163, 89 S.Ct. 935, 22 L.Ed2d 162, at 167 and 172-174 (1969). The sheriff's summary termination of the appellant's privilege ended any prospect of just ignoring §15(d).

For many years prior to 1981 your appellant had been routinely executing his client's bail bonds with the approval of the sheriff and without any problems. None of

your appellant's clients ever forfeited their bail bonds. Since appellant would post a bond each time he secured release of a client with his bail bonds, there was no possibility of any prejudice to the state by granting the requested temporary injunction.

If the trial court did have discretion to deny the temporary order sought, it was an abuse of that discretion to deny it in this case. The probability that appellant will prevail at trial is great. Absolute prohibitions on advertising of services are unconstitutional. Central Hudson Gas v. Public Service Com'n., 447 U.S. 557, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980).

The Court of Appeals correctly held that any denial of a constitutional right raises a presumption of irreparable injury which entitles a plaintiff to a temporary injunction as a matter of law. The Court of Appeals correctly noted that the trial court had no discretion to deny a temporary

injunction if a violation of a First Amendment right was shown by non-conflicting evidence.

The Court of Appeals was not correct in holding that there had been no evidence presented of a violation of appellant's free speech rights. The letters from the sheriff and the district attorney which were admitted in the courts below constitute non-conflicting evidence of violations of appellant's First Amendment rights. Since this undisputed evidence of gross violations of appellant's First Amendment rights was admitted below, it was an abuse of discretion to deny the temporary injunction sought by appellant.

If this action under 42 U.S.C. §1983 had been brought in a federal court where the same standard of a probable right to prevail on the merits and irreparable injury applies, it would have been an abuse of discretion to deny relief for many

reasons including the following:

1. There are no pending or expected state proceedings which may be disrupted by the temporary order;

2. Appellant is being seriously injured by the denial of substantive and procedural rights conferred by the First, Fifth, Sixth and Fourteenth Amendments;

3. There is no possibility of injury to the state by the granting of the temporary injunction.

It is clear that appellant was entitled to a temporary injunction enabling him to continue executing bail bonds for his clients and that the trial court abused its discretion in denying the temporary injunction. The serious First and Fourteenth Amendment rights at stake in this case require plenary consideration of these issues.

II. The Bail Bond Act, As Applied To Appellant, Violates Appellant's Established First Amendment Rights

And Prevents Informed Decision-making By Consumers

All Texas attorneys are permitted by the Bail Bond Act to execute bail bonds for their clients provided they post security satisfactory to the sheriff of the county where they reside. The Bail Bond Act was enacted in 1973, when lawyers were not permitted to advertise under any circumstances in Texas.

Truthful advertising related to lawful activities is entitled to the protection of the First Amendment. Matter of R M. J , ___ U.S. ___, 102 S.Ct. 929, 937, 71 L.Ed2d 64 (1982). Since attorneys may lawfully execute bail bonds, their advertisements of this ability are protected as long as they are truthful.

All that appellant advertised was his ability to provide bail bonds. The district attorney admits that attorneys have a right to advertise their ability to

execute bail bonds. He also says it is lawful for attorneys so to advertise under the heading "Attorneys" in the yellow pages, but unlawful for an attorney to place the identical advertisement under the heading "Bonds-Bail" in the same yellow pages.

Section 15 (d) of the Bail Bond Act prohibits all advertising "as a bondsman" by non-licensed persons. It has no special restrictions as to the place or form of the advertising. This is the section the state claims appellant violated.

Even when advertising communicates only an incomplete version of the relevant facts, the First Amendment presumes that some accurate information is better than no information at all. Central Hudson Gas v. Public Service Commission, 447 U.S. 557, 100 S.Ct. 2343, at 2349, 65 L.Ed.2d 341 (1980); Bates v. State Bar of Arizona, 433 U.S. 350, at 374, 97 S.Ct. 2691, at 2704, 53 L.Ed.2d 810 (1977).

Appellant had no duty to state he was an attorney to advertise his ability to execute bail bonds. It appears to be the state's contention that since appellant's advertising did not disclose all the limitations on his ability to execute bail bonds, the advertising was not protected speech. This position is contrary to the Central Hudson Gas and Bates cases.

Now that the right to publish truthful advertisements of the services one offers has been extended to attorneys, the state has absolutely no interest at all in prohibiting attorneys from informing potential clients reading the yellow pages that they have posted sufficient security to execute clients' bail bonds.

It is common knowledge that many people look under the heading "Bonds-Bail" instead of the heading "Attorneys" when they first begin to arrange pre-trial release. It is at this critical point in the

criminal process when the purchaser of services needs to be informed of the potential savings which may be realized by retaining an attorney who has posted the required security which allows the attorney to be the bail bond surety.

The basic issue here is the FREE FLOW OF COMMERCIAL INFORMATION to the public from under the heading "Bonds-Bail" in the telephone book yellow pages. The public has a right to receive this information and to become sufficiently informed to make a reasonably intelligent choice between the alternatives of retaining a bondsman only or retaining an attorney for the entire criminal case who will also execute the bail bond. The fact that the entire cost of the attorney's services for the entire case is often not much greater than the bondsman's fee alone should be part of this flow of commercial information. Bates v. State Bar of Arizona, 433 U.S. 350, 364, 97 S.Ct. 2691,

2699, 53 L.Ed.2d 810 (1977).

The state made no attempt whatsoever in the courts below to meet any of the constitutional requirements it was required to show to restrain appellant's advertising. See Central Hudson Gas v. Public Service Commission, 447 U.S. 557, 566, 100 S.Ct. 2343, 2351, 65 L.Ed.2d 341 (1980). The state is required to meet the same burden of proof in this case in spite of the fact that here the sanction for speech is revocation of a statutory exemption instead of a fine or an injunction. Speiser v. Randall, 357 U.S. 513, 78 S.Ct. 1332, 2 L.Ed.2d 1460 (1958). There does not appear to be any state interest to be furthered by suppression of the attorney exception to the Bail Bond Act. Section 15 (d), which purports to prohibit advertising is presumedly unconstitutional.

The great interest of the public in the free flow of commercial information and the

clear denial of First Amendment rights to appellant justify plenary consideration of this case.

III. The Bail Bond Act Is Unconstitutionally Vague

Section 15 (d) of the Bail Bond Act upon which the state seeks to justify its actions is entirely too vague to allow anyone to guess it would restrict the part of the yellow pages in which an attorney could advertise. The district attorney in effect added a restriction to the statute. This adding of text to laws by district attorneys is prohibited by the First Amendment when speech-related conduct is involved. It would violate the Fourteenth Amendment's general requirements for due process if speech was not involved. See Grayned v. Rockford, 408 U.S. 104, 108-109, 92 S.Ct. 2294, 33 L.Ed.2d 222, 227-228 (1972).

To compound the vagueness the Bail Bond

Act fails to provide for the propensity of telephone books to find their way across county lines to areas where the Bail Bond Act does not apply. According to Section 3 (c) of the Act, it applies only to counties with less than 110,000 inhabitants. Texas courts strictly enforce this limitation. See De La Garza v. State, 579 S.W.2d 220 (Tex.Crim.App., EN BANC, 1979), which discussed the other types of conduct prohibited by § 15 of the Act. The De La Garza case did not mention advertising.

Section 15 (d) of the Act, as interpreted by the Harris County Sheriff and District Attorney, with court approval to date, effectively prohibits advertising in counties which are not supposed to be subject to the Act by penalizing anyone whose advertising aimed at a non-regulated county finds its way into a regulated county. Section 15 (d) tends to have a chilling effect on lawful advertising in the non-regulated county and

tends to force advertisers to forego any advertising in the non-regulated market if they lack the license in the regulated neighboring county.

There is no way to steer a course between the lawful and purportedly unlawful conduct within the literal scope of § 15 (d) unless one omits all advertising in any telephone book which might someday find its way into the regulated county. This makes § 15 (d) unconstitutionally vague. See Grayned v. City of Rockford, 408 U.S. 104, 108-109, 92 S.Ct. 2294, 33 L.Ed.2d 222, 227-228 (1972).

It is settled that the free flow of commercial information about services lawfully available in other jurisdictions cannot be restrained. C.F. Bigelow v. Virginia, 421 U.S. 809, 823-825, 95 S.Ct. 2222, 2233-2235, 44 L.Ed.2d 600 (1975).

The weighty interest of the public in the free flow of information concerning

services available in neighboring counties and the clear denial of First and Fourteenth Amendment freedoms to the appellant justify plenary consideration of this case.

IV. The Bail Bond Act Fails To Provide Equal Protection Under The Law

The Bail Bond Act provides extensive procedural safeguards for any licensed bail bondsman whose license the state seeks to revoke. The Court of Appeals has construed the Act as providing no procedural safeguards whatsoever to attorneys. The provision of fundamental procedural due process for one class but not another, makes the Bail Bond Act violative of the constitutional requirement that equal protection of the law be granted to all classes of citizens. Furthermore, there is no possible state interest in suppression of attorneys' advertising of their ability to execute bail bonds. See City of New

Orleans v. Dukes, 427 U.S. 297, 303-304, 96 S.Ct. 2513, 2516-2517, 49 L.Ed.2d 511 (1976).

Plenary consideration of this case is justified by this clear denial of equal protection of the law which violates the Fourteenth Amendment of the United States Constitution.

V. The Bail Bond Act Fails To Provide Procedural Due Process For Attorneys Such As Appellant

a. First Amendment

At the hearing on appellant's application for a temporary injunction, the state did not try to prove it had enacted the procedural safeguards which the First Amendment requires. All the appellant proved was that his statutory exemption from the Bail Bond Act had been summarily terminated because of his speech-related conduct. It is settled law that any direct or indirect penalization for speech-related conduct must be accompanied by the procedural safeguards required by the

Constitution of the United States. Speiser v. Randall, 357 U.S. 513, 78 S.Ct. 1332, 2 L.Ed.2d 1460 (1958). In Speiser it was held that revocation of a statutory exemption because of speech requires the state to have the burden of proof. The courts below gave appellant this burden.

A leading case on this strict procedural standard which is mandated by the First Amendment is Freedman v. Maryland, 380 U.S. 51, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965). Decisions of the lower federal courts have applied these safeguards to both direct and indirect restraints on commercial speech, e.g. United States Postal Service v. Athena Products, 654 F.2d 362, at 365 and 367-369 (U.S. Appeals, 5th Circuit, Unit B, 1981) U.S. cert.den. 102 S.Ct. 1768 (1982). The Athena Products case held that indirectly rendering Athena's advertising for mail orders useless by stopping delivery of part of its mail was a restraint on speech which required

the First Amendment's procedural safeguards.

See also Space Age Products v. Gilliam, 488 F.Supp. 775, 782-785 (U.S.D.C.-D. Delaware, 1980) and Phoenix Mutual Life v. Insurance Department of New York, 500 F.Supp. 2, 6-8 (U.S.D.C.-S.D.N.Y., 1980). Both of these cases dealt with these procedural safeguards and commercial speech.

It is completely undisputed that there were no procedural safeguards whatsoever present in this case. This restraint on appellant's protected commercial speech which was effected prior to and completely without any notice or an adversary hearing of any sort requires plenary consideration because it is clearly a gross violation of the protection accorded by the First Amendment.

Appellant had a vested constitutional right to ignore the requirement, if any existed, that he obtain a license before he could advertise his ability to provide bail

bonds. His right to ignore the requirement arose because the requirement was unconstitutional and the license scheme did not provide a remedy or method to challenge the license requirement. Shuttlesworth v. City of Birmingham, 394 U.S. 147, at 151 and 160-163, 89 S.Ct. 935, 22 L.Ed.2d 162, at 167 and 172-174 (1969).

Appellant intended to challenge the constitutionality of § 15 (d) of the Act if he was prosecuted for "advertising as a bondsman". The district attorney and sheriff noticed this possibility and avoided the criminal court and the due process required by the United States Constitution. They have punished the appellant for a "speech" crime without going to all the trouble to convict him or give him a chance to defend. This lawsuit is certainly no substitute for a proceeding wherein the state assumes all the burdens of proof and provides for a speedy decision. Speiser v. Randall, 357 U.S. 513,

78 S.Ct. 1332, 2 L.Ed.2d 1460 (1958).

Even if the Court of Appeals is correct in its opinion that the sheriff could terminate the appellant's privilege of executing his client's bail bonds for the reasons listed in § 4 of the Act, the First Amendment would still entitle the appellant to relief. The uncontested evidence shows the privilege of executing bail bonds is being denied the appellant solely because of his advertising.

Even if the state may terminate a privilege for any reason or for no reason, it is not permitted to do so because of the exercise of a constitutional right - especially a right guaranteed by the First Amendment. See Mt. Healthy City School Dist. v. Doyle , 429 U.S. 274, at 283-284, 97 S.Ct. 568, at 574, 50 L.Ed.2d 471 (1977).

b. Fourteenth Amendment

Clear precedent from the Supreme Court of the United States would give the appellant a right to an adversary type of proceeding just before or immediately after the sheriff stopped honoring the appellant's bail bonds. This right exists because appellant had an established privilege which he had been using for many years, e.g. Goldburg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970).

Plenary consideration should be given to correct all these violations of rights protected by the First and Fourteenth Amendments.

CONCLUSION

For the foregoing reasons, this case should be reviewed by the Supreme Court.

Respectfully submitted,

Patricia Small Burroughs
Counsel of Record for
Appellant

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APPENDIX A

FIRST COURT OF APPEALS

LUKE WILLIAM ABLE,JR.ET.AL.,APPELLANT

NO.18106 VS.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 55th District Court of Harris County, Texas
Trial Court Cause Number 81-15461

This is an appeal from the denial of an interlocutory motion for mandatory temporary injunction. We affirm the judgment.

Appellant, Luke William Able,Jr., a practicing attorney licensed by the State of Texas, provides legal services to the community in the form of various legal clinics. Until March 6, 1981, he had routinely executed bail bonds on behalf of his clients in criminal matters without being licensed as a bondsman, pursuant to

an exemption under Section 3 of Article 2372p-3, V.A.T.S, commonly known as the Bail Bond Act.[1] On March 6, 1981, he received a letter from the Harris County Sheriff's Office informing him that, pursuant to an advisory opinion issued by the Harris County District Attorney's Office, and under the sheriff's discretionary right under Section 4 of the Act, he would no longer be allowed to execute bail bonds in Harris County, inasmuch as he had violated Section 15(d) of the Act by "advertising as a bondsman." At the heart of the sheriff's office's action was a dispute concerning certain advertising by

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[1]While the Bail Bond Act was amended effective August 30, 1981, this action arose prior to such date. All quotations from and references to the Act will be to the Act as it stood prior to August 30, 1981. We reject appellee's contention that appellant's appeal has become moot and should be dismissed.

appellant. Under the heading "Bonds-Bail" in the local telephone directory, appellant had listed his name, given services information, and stated that he was "Not a Bondsman." His name and services information also appeared in at least one local business directory under the heading "Bonds-Bail," but did not reflect that he was "Not a Bondsman." The business directory had circulation within and without Harris County. While appellant also advertised his services under the heading "Attorneys," that listing is not a source of dispute.

Appellant filed suit against the Harris County Sheriff's Office, the State of Texas and Harris County, alleging the unconstitutionality of Sections 15(d) and 4 of the Act, praying for damages, declaratory judgment and other relief, including a mandatory temporary injunction to permit him to execute bail bonds in Harris County,

pending final deterimination of the suit on the merits. Appellees contended that inasmuch as appellant had "advertised as a bondsman," he had forfeited his exemption privilege under Section 3(b) of the Act. Section 3(b) provides that

> Persons who are actually engaged in the practice of law and who are members of the State Bar of Texas who personally execute bail bonds or act as sureties for persons they actually represent in criminal cases may execute bailbonds or sureties without being licensed under this Act, but they are prohibited from engaging in the practices made the basis for revocation of license under this Act, and, if found guilty of violating the terms of this Act, may not qualify thereafter under the exception provided in this subsection (emphasis added).

Under Section 9(b)(1) of the Act, a license may be revoked for the violation of the provisions of the Act. Under Section 15(d) of the Act, no person may advertise as a bondsman without being licensed under the Act. It is clear that the legislature intended to prohibit attorneys

from engaging in practices that are grounds for license revocation. Minton v. Frank, 545 S.W.2d 442 (Tex. 1976). As it is a violation of the Act to advertise as a bondsman without holding a license under the Act, and inasmuch as violation of the Act is a grounds for revocation of a bondsman's license, and such acts are prohibited to attorneys claiming the Section 3(b) exemption, it is equally clear that an attorney, to claim qualification under Section 3(b), may not advertise as a bondsman. We also note that under Section 4 of the Act,

> A sheriff may examine under oath any proposed bondsman, or an officer or attorney of any company proposing to execute a bond, as to the indemnity, if any, deposited or otherwise provided directly or indirectly against loss by reason of the bond, and may refuse to accept the bond if, in the exercise of his discretion, he is satisfied that...the provisions of this Act have been violated (emphasis added).

It was in exercise of Section 4 of the Act that the Harris County Sheriff's Office refused to allow appellant to continue executing bail bonds.

On appeal, appellant raises one point of error, alleging error and abuse of discretion by the trial court in denying mandatory temporary injunction. In support of his argument, appellant offers voluminous legal argument for the unconstitutionality of Sections 15(d) and 4 of the Act, and relies primarily on the recent Supreme Court decision of Iranian Muslim Organization v. City of San Antonio, 615 S.W.2d 202 (Tex. 1981). It is appellant's position that under the Iranian decision, he was entitled to injunction as a matter of law as any violation of a constitutional right raises a presumption of irreparable injury.

A determination of the constitution-

ality of the Act is not within the proper scope of review of temporary injunction proceedings, and we decline to accept appellant's invitation to declare it unconstitutional. Davis v. Huey,571 S.W.2d 859 (Tex. 1978). We are limited to a review for abuse of discretion based upon the evidence presented to the trial court. City of Dallas v. Dallas City House Mover's Association, 555 S.W.2d 212 (Tex. Civ.App.-Dallas 1977, n.w.h.); Shopper's Fair of North Houston v. City of Houston, 406 S.W.2d 86 (Tex. Civ.App. -- Eastland 1966, n.r.e.).

Thus if at the hearing appellant did establish violation of his constitutional right of free speech, then under Iranian he would be entitled to mandatory temporary injunction as prayed for. As stated in Southwestern Newspapers Corp. v. Curtis, 584 S.W.2d 362 (Tex. Civ.App. -- Amarillo 1979, n.w.h.), cited with approval in

Iranian,

> In the classical sense, the granting of a temporary injunction is not warranted in the absence of some evidence establishing probable injury if the temporary injunction is not granted....But the legalism has no efficacy if there is a deprivation of a First Amendment freedom, for any significant denigration of First Amendment rights inflicts irreparable injury ...and constitutes irreparable harm.

584 S.W.2d at 365. However, after a careful review of the temporary injunction proceedings, we are of the opinion that appellant neither raised nor presented evidence to establish any violation of his free speech rights that would make the Iranian decision applicable to this case. In fact, we note that appellant opened the hearing by stating "I submit that the court does not have to decide the constitutional questions involved here today." This is to be compared with Iranian, where

> The sole question at the temporary injunction proceeding and on appeal has been whether the city's absolute ban on all public parades encompassing the Iranian question represents an unconstitutional prior restraint on free speech so as to inflict an irreparable injury.

615 S.W.2d 207. Under the facts as presented to the trial court, appellant did not establish any right to injunction as a matter of law pursuant to the Iranian decision.

The only question before the trial court in temporary injunction proceedings is whether the applicant is entitled to preservation of the status quo of the subject matter pending trial on the merits. Where no findings of fact or conclusions of law are filed by the trial court in connection with the denial of a temporary injunction, the judgment must be upheld on any legal theory supported by the record. Davis v. Huey. Under the Bail Bond Act

as written, and with the evidence presented, appellant had not established a probable right to prevail on the merits, and did not establish "irreparable injury" that could not be compensated by damages. McGonagill v. Hide-A-Way Lake Club, Inc., 566 S.W.2d 371 (Tex. Civ.App. --Tyler 1978, n.w.h.). Without commenting in any manner as to the underlying issue of constitutionality, we find that the trial court did not abuse its discretion in denying the injunction.

The judgment below is affirmed, with costs of appeal adjudged against the respective parties.

/s/ Lee Duggan, Jr.
Associate Justice

Associate Justices Peden and Warren also sitting.
Associate Justice Peden, having resigned effective October 20, 1981, did not participate in the opinion.
No publication. Tex.R. Civ.P.452
Judgment rendered and opinion filed February 25, 1982.

APPENDIX B

NO. 81-15,461

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

11TH JUDICIAL DISTRICT

LUKE WILLIAM ABLE, JR., Etc.

VS.

SHERIFF JACK HEARD, ET AL.

ORDER DENYING TEMPORARY INJUNCTION

On this 18th day of May, 1981, came on to be heard the above numbered and entitled suit in which Luke William Able, Jr., d/b/a Criminal Defense Clinic; Able Bail, Defense and Divorce Clinic; and Able Bail and Defense Clinic seeks temporary injunctive relief requiring defendants The State of Texas, Sheriff Jack Heard, Captain C.R. Gaines and Harris County to permit plaintiff to execute bail bonds pending final determination of this suit

challenging the constitutionality of Article 2372p-3, Vernon's Texas Civil Statutes, commonly known and described as the Bail Bond Act. Plaintiff Luke William Able, Jr., appeared in propria persona and announced ready for trial. Defendant The State of Texas appeared by the Attorney General of Texas and announced ready for trial. Defendants Sheriff Jack Heard, Captain C.R. Gaines and Harris County appeared by the County Attorney of Harris County and announced ready for trial. The Court having given due consideration to the pleadings filed by the parties, to the evidence adduced on trial, and to the arguments of counsel thereon, the Court is of the opinion that plaintiff Luke William Able, Jr., has not presented evidence that he has a probable right to continue to act as a surety on bail bonds he executes under the Bail Bond Act

pending the final determination of this suit on the merits. It is accordingly

ORDERED by the Court that the temporary injunction sought by plaintiff is DENIED. All costs are adjudged against plaintiff Luke William Able, Jr.

In open Court the plaintiff took exception to the ruling of the Court and gave notice of appeal to the Court of Civil Appeals.

SIGNED this 1 day of June, 1981.

/s/ Reagan Cartwright
JUDGE PRESIDING

APPENDIX C

BE IT REMEMBERED:

THAT at the term of the Honorable Court of Appeals for the First Supreme Judicial District of the State of Texas, begun and holden at Houston on the 1st Monday of October, A.D.1981, present FRANK G. EVANS, Chief Justice, Justices JAMES F. WARREN, HENRY E. DOYLE, JACK SMITH, SAM BASS, LEE DUGGAN, JR., ALLEN STILLEY, ARTHUR DYESS and FRANK C. PRICE.

In the cause

LUKE WILLIAM ABLE, JR. ET AL. Appellant,

No. 18106

vs.

From Harris County

Tr Ct # 81-1546

Opinion by Duggan, AJ

JACK HEARD ET AL. Appellee,

the following order was entered April 22, 1982:

"It is ordered that appellant's motion

for rehearing be OVERRULED."

C-3

IN THE SUPREME COURT OF TEXAS

July 21, 1982

No. C-1287

LUKE WILLIAM ABLE, JR. ET AL.

VS.

THE STATE OF TEXAS

From Harris County

First District

Application of petitioners for writ of error to the Court of Civil Appeals for the First Supreme Judicial District having been duly considered, it is ordered that the application be, and hereby is, dismissed for want of jurisdiction.

It is further ordered that applicant, Luke William Able, Jr. et al., and Mary Beth Able as surety pay all costs incurred on this application.

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C-4

October 6, 1982

No. C-1287

LUKE WILLIAM ABLE, JR. ET AL.

VS.

THE STATE OF TEXAS

From Harris County

First District

Petitioners motion for rehearing of application for writ of error having been duly considered, it is ordered that said motion be, and hereby is, overruled.

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APPENDIX D

Tex.Rev.Civ.Stats.Ann., Art. 2372p-3

Licensing and regulation of bail bondsmen

Declaration of policy

Section 1. The business of executing bail bonds is declared to be a business affecting the public interest. It is declared to be the policy of this state to provide reasonable regulation to the end that the right of bail be preserved and implemented by just and practical procedures governing the giving or making of bail bond and other security to guarantee appearance of the accused.

Definitions

Section 2. In this Act:

(1) "Person" includes corporations, other business entities, and associations of persons.

(2) "Bondsman" means any person who for hire or for any compensation deposits any cash or bonds or other securities, or executes as surety any bond for other persons, as many as five times in any 12-month period.

(3) "Company" includes corporations and other business entities.

(4) "Bond" includes cash deposit and any other similar deposit or written undertaking to assure appearance.

(5) "Board" means the County Bail Bond Board.

Requirements of license

Section 3. (a) No person may act

as a bondsman without the license required under the provisions of this Act, except as provided in Subsections (b), (c), and (d) of this section.

(b) Persons who are actually engaged in the practice of law and who are members of the State Bar of Texas who personally execute bail bonds or act as sureties for persons they actually represent in criminal cases may execute bail bonds or sureties without being licensed under this Act, but they are prohibited from engaging in the practices made the basis for revocation of license under this Act and, if found guilty of violating the terms of this Act, may not qualify thereafter under the exception provided in this subsection.

(c) The provisions of this Act do not apply to the execution of bail bonds in counties having a population of less than 110,000 according to the last preceding federal census.

(d) Persons who execute bonds as cosureties with a licensed bondsman.

Examination of bondsman by any sheriff

Section 4. A sheriff may examine under oath any proposed bondsman, or an officer or attorney of any company proposing to execute a bond, as to the indemnity, if any, deposited or otherwise provided directly or indirectly against loss by reason of the bond, and may refuse to accept the bond if, in the exercise of his discretion, he is satisfied that the security is insufficient, any portion of the security has been feloniously obtained, or the provisions of this Act have been violated.

County bail bond board

Section 5. (a) There is hereby created in all counties having a population of 110,000 or more, according to the last preceding federal census, a County Bail Bond Board.

(b) It shall be the duty of the County Bail Bond Board to set rules and regulations relative to the making of bail bonds by bondsmen within the county. No person may act as a bondsman unless he first obtains a license from the board unless exempted under the provisions of Section 3 of this Act.

(c) The County Bail Bond Board shall be composed of the following persons:

(1) the county sheriff or his designee;

(2) a district judge of the county having jurisdiction over criminal matters designated by the presiding judge of the administrative judicial district;

(3) the county judge or a member of the commissioners court designated by the county judge;

(4) a judge of a county court or a county court at law in the county having jurisdiction over criminal matters designated by the commissioners court;

(5) the district attorney or his designee.

(d) The board shall meet within 60 days after its creation. The board shall initially elect one of its members as chairman who shall preside at all meetings to be held thereafter at the call of the chairman.

(e) Three members of the board shall constitute a quorum for the conduct of business. All action by the board shall require the vote of a majority of the

members present.

(f) Unless clearly not required by this Act, all rules, regulations, and actions of the board passed pursuant to this Act shall be posted at an appropriate place in the courthouse for a period of 10 days prior to their effective date.

(g) The County Bail Bond Board has the following powers and duties:

(1) To establish rules to be followed in the county relating to the setting and taking of bail bonds;

(2) To conduct hearings and make determinations respecting the issuance of licenses to bondsmen within the provisions of this Act and to issue licenses to bondsmen who qualify under the terms of this Act;

(3) To administer oaths and examine witnesses in its hearings;

(4) To investigate applicants and licensees and all persons in concert with them to determine their qualifications to meet the requirements of this Act;

(5) To cause records and transcripts to be made of all its proceedings; and

(6) To maintain records and minutes and otherwise operate its office affairs.

Application and issuance of license

Section 6. (a) Any person desiring to act as a bondsman in any court of the county shall file with the County Bail Bond Board a sworn application for a license. The application shall be in such form as the board may prescribe, and shall set forth:

(1) The name and address of the applicant, and if the applicant shall be

a firm or corporation, the name of each officer and director thereof and all of its employees actively engaged in processing the giving or making of bail bonds within the county;

(2) The name under which the business shall be conducted;

(3) The name of the place or places wherein the business is to be conducted;

(4) The list of nonexempt properties owned by the applicant and rendered on the tax rolls of the county, the same to be certified by the county tax assessor and collector of the county involved, along with a personal financial statement of the applicant;

(5) Any corporation duly qualified to act as a surety in the State of Texas shall name its agent or agents proposed to do business of making bail in the county;

(6) A statement that such applicant has not been denied or refused a license in the county during the past 12 months.

(b) The application shall be accompanied by letters of recommendation from three reputable persons who have known the applicant for a period of at least three years. Each letter shall recommend applicant as having a reputation of honesty, truthfulness, fair dealing, and competency and shall recommend that the permit be granted to the applicant.

(c) The application shall be accompanied by a fee of $500 for the filing of any original application.

(d) Upon notice from the board that the application has been tentatively approved, the applicant shall then:

(1) deposit with the county treasurer of the county in which his principal

office is located a cashier's check, certificate of deposit, or cash in the amount of $5,000, to be held in a special fund to be called the bail security fund; or

(2) execute in trust to the sheriff of the county in which his principal office is located a deed to nonexempt real property of the value, as determined by the sheriff, of not less than $10,000, the condition of the trust being that the property may be sold to satisfy any forfeitures that may be made in bonds executed by him after such notice and upon such conditions as are hereinafter provided.

(e) The cash deposit or the funds realized from the trust may be used to pay the judgments of any bail forfeitures that result from the person's execution of a bail bond, if the licensee fails to satisfy the judgment within 30 days subsequent to the date of issue by presentment of final judgment to the county treasurer. When any sums are depleted from the deposit or trust to pay a judgment resulting from a forfeited bond, the licensee shall, as a condition to continuing as a licensee, replenish the amount so depleted. When the licensee ceases to engage in the business of executing bail bonds and ceases to maintain his license, he may withdraw his security deposit or trust upon presentment of a release by the sheriff, if there are no judgments or bond liabilities outstanding against the license. Any portion of the deposit or trust not used to pay judgments shall be returned to the licensee or his heirs or assigns upon presentment of a release by the

sheriff.

(f) Before application of the cash deposit, cashier's check, or certificate of deposit, or before any action is taken to liquidate property held in trust, the sheriff or his agent shall make demand of the licensee to pay the judgment. In the event of failure or refusal to do so within 30 days of the demand, the sheriff may apply the deposit to pay the judgment or liquidate the trust and apply the proceeds to pay the judgment. The licensee shall keep the sheriff notified of the mailing address to which notice of a judgment may be sent, and the mailing of notices by certified mail to the address provided by the licensee shall be sufficient to comply with the notice requirements of this section.

Corporation as surety

Section 7. (a) Wherever in this Act any person is required or authorized to give or execute any bail bond, such bail bond may be given or executed by such principal and any corporation authorized by law to act as surety. When any such corporation authorized by law to act as a surety undertakes to be a surety on a bail bond, such corporation, before being acceptable as a surety on a bail bond, shall be required to meet the same requirements an individual is required to meet by this chapter before being acceptable as a personal surety on a bail bond.

(b) The certificate of authority to do business in this state issued to a corporation by the State Board of Insurance pursuant to Article 8.20, Insurance

Code, as now or hereafter amended, shall not be conclusive evidence as to the sufficiency of the security, the corporation's solvency, or its credits; and if the court or officer taking the bail bond is not fully satisfied as to the sufficiency of the security offered by the corporation, further evidence shall be required before approving the bail bond.

(c) Any corporation which acts as a surety shall, before executing any bail bond, first file in the office of the county clerk of the county where such bail bond is given a power of attorney designating and authorizing the named agent, agents, or attorney of such corporation to execute such bail bonds by such agent, agents, or attorney. This power of attorney shall be a valid and binding obligation of the corporation.

(d) Notwithstanding any statutory requirements to the contrary, any agent so designated and licensed hereunder for the purpose of writing bail bonds shall not be required to be licensed as a local recording agent as defined in Article 21.14, Texas Insurance Code, as amended, for the purpose of this Act.

Expiration of license

Section 8. (a) A license issued under this Act expires 24 months after the date of its issuance and may not be renewed unless an application for renewal is filed with the board at least 30 days before expiration. The application for renewal shall have the same form and content as an application for an original license under this Act. The application

for renewal shall be accompanied by a renewal fee of $250. The license may then be renewed for a period of 12 months from the date of expiration and may be renewed subsequently each year in like manner.

(b) All fees collected by the board shall be deposited in the general fund of the county.

(c) Each license, when issued, shall show on its face the date of expiration and license number, and it shall be the responsibility of the licensee to file for renewal under the terms of this Act, and each subsequent renewal license shall have the same number as assigned the original license.

Refusal and revocation of license

Section 9. (a) No license may be issued to any person who:

(1) is bankrupt or insolvent; or

(2) has had his license revoked for default upon a bond and has not satisfied the obligation of the bond.

(b) Any license may be suspended or revoked by the board for:

(1) violation of the provisions of this Act;

(2) fraudulently obtaining a license under the provisions of this Act;

(3) conviction under the laws of this or any other state or of the federal government of a misdemeanor involving moral turpitude or of a felony;

(4) being adjudged bankrupt or becoming insolvent;

(5) failing to pay within 30 days any final judgment rendered on any forfeited bond in any court of competent juris-

diction within this state;

(6) failure to pay, in addition to the principal amount of a forfeited bond, all necessary and reasonable expenses incurred by all peace officers in arresting the principal on any bail bond executed by him, in the event the principal fails to appear as required by law;

(7) a licensee's paying commission or dividing commissions or fees with any person, company, firm, or corporation not permitted hereunder to execute bonds or in any manner passing anything of value to any person for referrals of bond business; or

(8) soliciting bail bond business in any building where prisoners are processed or confined.

Procedure for suspension or revocation of license

Section 10. (a) The board may revoke or suspend a license in accordance with the procedure provided in this section for the violation of any provision of this Act.

(b) Notice of a hearing to suspend or revoke shall be given by certified mail addressed to the last known address of the licensee at least 10 days prior to a date set for the hearing.

(c) The notice shall specify the charges of violation of this Act made against the licensee, and no other charges shall be made at the hearing pursuant to the notice.

(d) The hearing shall afford to the licensee opportunity to be heard, to present witnesses in his behalf, and to

question witnesses against him.

(c) A record of the hearing shall be made. It shall be made available to the licensee on his request subject to his paying reasonable costs of transcription.

Court review

Section 11. An appeal may be taken from any board's order revoking, suspending, or refusing to issue a license. The appeal must be made within 30 days after written notice of the suspension, revocation, or refusal by filing a petition in a district court in the county in which the license is issued or refused. If no appeal is taken within 30 days after written notice of suspension, revocation, or refusal, such action shall become final. An appeal shall be by trial de novo, as in proceedings appealed from justice to county courts. The decision of the board shall have full force and effect pending the determination of the appeal. All appeals taken from actions of the board shall be against the board and not against the members individually.

Other procedural provisions

Section 12. (a) In each instance where a principal has been rearrested and returned to the county wherein his bond was made within 120 days after the date of the final judgment on the bond forfeiture and no appeal has been taken and provided that the principal was rearrested as a result of money spent or information furnished by the surety,

the surety thereon may file a motion of remittance in the court commanding the appearance of the principal and the court shall order at least 50 percent of the amount paid on the judgment remitted. The payment shall be made by the county treasurer.

(b) Any licensee under this Act may execute bail bonds in the county in which his license is issued and, after being certified by the sheriff in his county, may present a bail bond to any sheriff in the state having custody of the accused person named therein, except that a sheriff of a county having a population in excess of 110,000 according to the last preceding federal census may require that all bail bonds be executed by persons licensed in that county.

(c) A person whose application for license to engage in the execution of bail bonds has been refused may not make or renew the application for a period of one year from the date of final rejection.

Surrender of principal

Section 13. (a) No person who executes a bail bond as a surety for a principal may surrender the principal unless he forthwith executes an affidavit to be filed with the clerk of the court stating:

(1) the date the bond was made;

(2) the fee paid for the bond; and

(3) the reason for the surrender.

(b) If the reason for surrender is deemed without reasonable cause by the principal, any agent of the sheriff, or any attorney representing the state or any accused in the proceeding that

person may bring the matter to the attention of the court.

(c) If the court determines that the person who surrendered the principal did so without reasonable cause, the court in its discretion may require that all or a part of the fees paid as a condition for making the bail bond shall be returned to the principal. In making the determination the court shall determine what fees, whether denominated fees for the making of the bond or not, were in fact paid for the purpose of inducing the surety to make the bond.

Approval of bond

Section 14. The sheriff of any county has the sole responsibility of receiving and approving bail bonds for the purpose of gaining the release of a named principal held in custody by any authority in his county upon accusation of an offense of which the county or district court has jurisdiction.

Acts subject to fine

Section 15. (a) No person required to be licensed under this Act may execute a bail bond without a license.

(b) No bondsman or agent of a bondsman may, by any means, recommend or suggest to any person whose bail bond has been posted by that person the name of any particular attorney or firm of attorneys for employment in connection with a criminal offense.

(c) No sheriff, peace officer, or his deputy or employee, or clerk, or deputy clerk of any court may recommend to any

person or persons, family of such person or persons, friends, relatives, or employer the name of any particular bondsman. In all places where prisoners are examined,processed or confined, a list of licensed bondsmen of that county may be displayed.

(d) No person may advertise as a bondsman who does not hold a valid license under this Act. Provided, however, any second or subsequent violation of this subsection shall be punishable as provided by Subsection (g) of this section.

(e) Any person who violates a provision of this section commits a misdemeanor punishable by a fine of not more than $500.

(f) No stocks or bonds or real estate used as security for the making of any bail bond may be transferred at any time while there remains an outstanding bail bond secured by this property; except that a surety may make application to the sheriff for permission to sell or trade any portion of such property and the sheriff shall give a written consent for such sale or trade upon finding that the remaining property is sufficient security for all outstanding bonds of the licensee.

(g) Any person who violates Subsection (f) of this section shall be guilty of a misdemeanor punishable by a fine of not more than $1,000 or confinement in the county jail for not more than one year or both.

Severability

Section 16. If any provision of this

Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Acts 1973, 63rd Leg., p. 1520, ch.550, eff. Aug.27,1973. Secs.3(c),5(a) and 12(b) amended by Acts 1975, 64th Leg., p. 1194, ch.451,§§1 to 3, eff. June 19, 1975; Acts 1979, 66th Leg., p. 202, ch. 111, §§1 to 3, eff. Aug. 27, 1979.

APPENDIX E

NO. 18,106

IN THE

COURT OF CIVIL APPEALS

FOR THE

FIRST SUPREME JUDICIAL DISTRICT OF TEXAS

AT HOUSTON

LUKE WILLIAM ABLE, JR. doing business as the Criminal Defense Clinic; Able Bail, Defense, and Divorce Clinic; and Able Bail and Defense Clinic,

Appellant,

v.

THE STATE OF TEXAS; JACK HEARD; C.R. GAINES; and HARRIS COUNTY,

Appellees.

NOTICE OF APPEAL

Notice is hereby given that Luke William Able, Jr. hereby appeals to the United States Supreme Court from the judgment of this Court entered in the above captioned proceeding on the 25th day of February, 1982 affirming the Order

Denying Temporary Injunction of the District Court of Harris County, Texas, 11th Judicial District, entered on June 1, 1982. The Supreme Court of Texas declined jurisdiction and on October 6, 1982 it denied appellant's motion for rehearing. This appeal to the Supreme Court of the United States is taken under 28 U.S.C. §1257 (2).

Dated: 11/2/82

Patricia Small Burroughs
Attorney for Appellant
7303 Hillcroft, Suite 53
Houston, TX 77081
(713) 777-0744

CERTIFICATE OF SERVICE

I, Patricia Small Burroughs, a member of the Bar of the United States Supreme Court, counsel for the appellant, hereby certify that on the 2nd day of November, 1982, I served the foregoing Notice of Appeal on all parties required to be served by depositing three copies of said Notice of Appeal in a United States mailbox, with first-class postage prepaid, addressed to counsel of record for each party at his or her post office address, in accordance with Rule 28 (3) of the Supreme

Court, as follows:

Laura S. Martin
Assistant Attorney General
Attorney for the State of Texas
P.O. Box 12548
Austin, TX 78711

Billy E. Lee
Assistant County Attorney
Attorney for Jack Heard, C.R. Gaines
and Harris County
634 Harris County Administration Building
Houston, TX 77002

In addition, I served a copy of the Notice of Appeal on:

Clerk of the Supreme Court of Texas
Supreme Court Building
P.O. Box 12248
Austin, TX 78711

Patricia Small Burroughs

APPENDIX F

JACK HEARD, Sheriff

Houston, Texas 77002

Gus George
Chief Executive Assistant

March 6, 1981

Luke William Able

Attorney-at-Law

7303 Hillcroft

Suite 53

Houston, Texas 77081

Dear Mr. Able:

Reference is made to our conversation on February 12, 1981, in my office, reference to complaints received relative to you as an attorney advertising as a bail bondsman in violation of the Bail Bond Act. Your position was that you were in compliance with pertinent statutes. At that meeting you were informed that an opinion relative to this matter would be sought from the Harris County District Attorney's

Office.

The Office of District Attorney of Harris County advised in letter dated March 3, 1981 as follows:

> "....it is this office's opinion that inasmuch as an attorney can only execute a bail bond for his his own client, it is a criminal offense for an attorney to advertise 'as a bondsman' when he is not the holder of a bail bond license".

The letter from the District Attorney's Office further states, relative to the provisions of Section 4 of the Bail Bond Act as follows:

> "Based upon this provision, it is the opinion of this office that the Sheriff has the discretion to refuse to permit an attorney to execute bail bonds for his clients if the Sheriff is satisfied that the attorney is presently violating the Bail Bond Act by advertising as a bondsman."

In view of the opinion rendered by the Harris County District Attorney's Office you are hereby notified that under the

provisions of Section 3 (b) you no longer qualify under the attorney exception provided in this subsection and therefore may not execute any further bail bonds in Harris County. You may however, submit an application for a license to execute bail bonds as Bail Bondsman.

Yours truly,

s/
C.R. Gaines, Captain
Criminal Warrants Division

CRG/pr

Henry K.Oncken
First Assistant

District Attorney's Building
201 Fannin, Suite 200
Houston, Texas 77002

John B. Holmes, Jr.

District Attorney

Harris County, Texas

March 3, 1981

Captain C.R. Gaines

Bail Bond Section

Criminal Warrants Division

Harris County Sheriff's Office

301 San Jacinto

Houston, Texas 77002

Re: Opinion No. 81-3
Is it Lawful for An Attorney Who is Not Licensed Under the Bail Bond Act, Article 2372p-3, V.A.C.S., to Advertise the Fact That He Executes Bail Bonds?

Dear Captain Gaines:

You have requested an opinion from this office as to whether an attorney licensed to practice law by the State Bar of Texas, but not licensed to execute bail bonds

under the Bail Bond Act, Article 2372p-3, V.A.C.S., can lawfully advertise that he executes bail bonds for persons charged with criminal offenses.

Article 2372p-3, Sec. 3(b), V.A.C.S., permits an attorney who is a member of the State Bar of Texas to execute a bail bond or act as a surety for a person he actually represents in a criminal case without being licensed under the Bail Bond Act. However, this same subsection of the Act provides that if an attorney is found guilty of violating any term of the Act he may not thereafter execute a bail bond without a bail bond license. Further, Sec. 15(d) creates a misdemeanor offense punishable by a fine up to $500 for any person to "advertise as a bondsman who does not hold a valid license under this Act." (Emphasis supplied.) Construing

together these two provisions, Sec. 3(b) and Sec. 15(d), it is this office's opinion that inasmuch as an attorney can only execute a bail bond for his own client, it is a criminal offense for an attorney to advertise "as a bondsman" when he is not the holder of a bail bond license.

Section 4 of the Bail Bond Act permits the Sheriff to "refuse to accept [a] bond if, in the exercise of his discretion, he is satisfied that ... the provisions of this Act have been violated." Based upon this provision, it is the opinion of this office that the Sheriff has the discretion to refuse to permit an attorney to execute bail bonds for his clients if the Sheriff is satisfied that the attorney is presently violating the Bail Bond Act by advertising as a bondsman.

As to what constitutes advertising "as a

bondsman," it is the opinion of this office that an ad appearing in the "Bonds-Bail" subject heading of the yellow pages is such a form of advertising violative of the Bail Bond Act. In contrast, listing under one's name in the "Attorneys" subject heading of the yellow pages that one writes bail bonds as an attorney probably is not violative of the Bail Bond Act's prescription against advertising.

It is my pleasure to assist you. Please do not hesitate to contact me again if this office can provide any further assistance.

Sincerely

s/
JOHN B. HOLMES, JR.
District Attorney
Harris County, Texas

JBH,Jr.:gsb

cc: Henry Oncken and
Larry P. Urquhart, Opinion Committee
Gene Miles

APPENDIX G

NO. 81-15,461

IN THE DISTRICT COURT

OF HARRIS COUNTY, TEXAS

55TH JUDICIAL DISTRICT

LUKE WILLIAM ABLE, JR.

VS.

JACK HEARD, ET. AL.

PLAINTIFF'S REQUEST FOR ADDITIONAL OR AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff Luke William Able, Jr., requesting the Court to make additional or amended findings of fact and conclusions of law in addition to the findings and conclusions in the ORDER DENYING TEMPORARY INJUNCTION as follows:

I.

Section 15(d) of the Bail Bond Act, Article 2372p-3 of the Texas Civil Statutes in so far as it prohibits an

attorney from advertising his ability to execute bail bonds under section 3(b) of the said Bail Bond Act is violative of the First Amendment to the United States Constitution and Article I, Section 8 of the Texas Constitution.

. . . .

VIII.

The failure to accord plaintiff a hearing and the failure to give him notice denied him procedural due process in violation of the constitutions of Texas and the United States. Defendant's summary suspension of plaintiff's valuable privilege is unconstitutional.

. . . .

XI.

The chance given plaintiff to oppose the suspension of his privilege by defendants was constitutionally insufficient with regard to the following:

1. the private and PUBLIC interests involved;

2. the risk of an erroneous determination and the value of additional safeguards such as records of testimony, formal charges, the right to remain silent, the right to confront his accusers, disclosure of the identity of the complainant, the right to a jury trial, and other basic rights which every person accused of a crime has in this United States. (Plaintiff is accused of violating section 15(d) of said act which is a misdemeanor. The prohibited conduct is advertising without a bail bondsman's license which attorneys are not required to obtain before they may execute bail bonds.)

XII.

Imposition of punishment upon plaintiff for a crime without filing charges and convicting plaintiff violates each and

every provision of the Bill of Rights of the United States and Texas Constitutions which relates to the rights of any criminal defendant.

. . . .

XV.

There is a serious constitutional question about the validity of Section 15 (d) of the Bail Bond Act, Tex.Rev.Civ. Stats.Ann., applying to attorneys who are specially granted the privilege of executing bail bonds by section 3(b) of the same act.

The Court is of the opinion that the State of Texas has no valid governmental interest in allowing attorneys to execute bail bonds for their clients while suppressing all advertising of such privilege by such attorneys.

. . . .

WHEREFORE, PREMISES CONSIDERED, plaintiff prays that the Court make the foregoing additional or amended findings and conclusions in addition to the findings and conclusions listed in the ORDER DENYING TEMPORARY INJUNCTION signed on June 1, 1981.

Respectfully submitted,

/s/_____
Luke William Able, Jr.
Plaintiff-Pro Se
Bar No. 00811500
7303 Hillcroft, Suite 53
Houston, Texas 77081
777-0744

NOTICE OF SETTING

The foregoing motion is set for a hearing on the ___day of _____, 1981, at ____o'clock _.M.

SIGNED AND ENTERED this _____ day of _____, 1981.

_____
Reagan Cartwright, Judge

CERTIFICATE OF SERVICE

This June ___, 1981, I mailed a true copy hereof as shown below:

Billy E. Lee
Asst. County Attorney
634 Harris County Administration Building
Houston, Texas 77002
221-5101
CERT. MAIL # 107100

Laura S. Martin
Asst. Attorney General
P.O.Box 12548
Austin, Texas 78711
512-475-3131
Cert. Mail # 107916

/s/
Luke W. Able, Jr.

ORDER

The foregoing motion is ~~granted~~/denied.

SIGNED this 9 day of June, 1981.

/s/
Reagan Cartwright, Judge

Office-Supreme Court, U.S.
FILED
MAR 9 1983
ALEXANDER L. STEVAS
CLERK

NO. 82-1093

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

LUKE WILLIAM ABLE, JR., Etc.
Appellants-Petitioners

v.

THE STATE OF TEXAS, Et al.
Appellees-Respondents

MOTION TO DISMISS OR AFFIRM

JIM MATTOX
Attorney General of Texas

LAURA S. MARTIN
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P. O. Box 12548
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MIKE DRISCOLL
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Harris County, Texas

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1001 Preston, Suite 634
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(713) 221-5101

Attorneys for Appellees

FILED: MARCH 9, 1983

Alpha Law Brief Co., Inc.—5606 Parkersburg—Houston, Texas 77036—223-3003

NO. 82-1093

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

LUKE WILLIAM ABLE, JR., Etc.
Appellants-Petitioners

v.

THE STATE OF TEXAS, Et al.
Appellees-Respondents

MOTION TO DISMISS OR AFFIRM

Appellant Luke William Able, Jr., is an attorney. He practices in the law field of criminal defense. The Texas Legislature in 1973 enacted a law licensing and regulating bail bondsmen, Article 2372p-3, Vernon's Texas Civil Statutes. The statute was amended in 1975 and again in 1979. At issue is the statute as amended in 1979. (App. D). The Act permitted only a licensed bondsman to make a bail bond, with some exceptions, among them being an exception for a licensed practicing attorney to make a

bail bond for a person whom he actually represents in a criminal case. Section 15(d) of the Act prohibited anyone advertising as a bondsman unless he held a valid license under the Act. The attorney did not hold a license under the Act, as he was allowed to make bail bonds for his clients under an exception to the Act. However, he did advertise that he could make bail bonds—advertising that the Act itself limited only to those who were licensed bondsmen. Section 4 of the Act authorized the Sheriff to refuse to accept a bail bond if, in the exercise of his discretion, he is satisfied that the provisions of the Act have been violated. The Sheriff notified the attorney that he would accept no further bail bonds from him unless he qualified as a licensed bail bondsman. At the hearing on the attorney's application for a temporary injunction Captain Gaines testified that in a meeting with the attorney the Sheriff had offered to allow the attorney to continue making bonds for his own clients if he would discontinue the telephone number listed in the advertisements and subscribe to a new telephone number without having his advertised calls forwarded to him. This offer was not accepted.

The Trial Court denied a temporary injunction. (App. B). The attorney appealed to the Court of Appeals of Texas. After the judgment of the Trial Court and prior to the hearing in the Court of Appeals, a Legislative amendment of Article 2372p-3 in its entirety became effective on August 31, 1981. Chapter 312, Acts of the 67th Legislature, 1981, page 875. This was urged as mooting the attorney's appeal, as the statute under which the suit was brought had been abrogated prior to any hearing on the merits. The Court of Appeals rejected

that argument in its footnote 1 (App. A-2), but considered the appeal and affirmed the denial of the temporary injunction on the merits. The attorney then appealed to the Supreme Court of Texas, which dismissed the appeal for want of jurisdiction. (App. C-3). See Rule 483, Texas Rules of Civil Procedure.

Now, the attorney's appeal pends in this Court. The appellees move to dismiss the appeal, or, alternatively, to affirm the three State Courts. It is apparent that the appeal is from the denial of a temporary injunction. The hearing on the merits of granting a permanent injunction is still pending in the Trial Court. The amendment of the Bail Bond Act became effective after the interim hearing in the Trial Court. When the case is heard and determined on its merits, it is possible and probable that no constitutional objections will be still available to the attorney. The attorney seeks injunctive relief from a State statute that no longer exists. The State Courts have not yet held a hearing of the statute now on the books. If the constitutionality of the existing statute is unresolved after a full trial on the merits, then the way to the Supreme Court will be open. The decision by this Court construing a statute that passed out of existence would not be in the best interests of the nation's jurisprudence. If the Court adopts the practice of accepting appeals of interim orders from lower Courts, the burden of the Court will increase materially, unnecessarily. It is in the best interests of justice that this appeal be dismissed as premature.

WHEREFORE, appellees pray the Court to dismiss the appeal, or alternatively, to affirm the State Courts, at appellant's cost.

Respectfully submitted,

JIM MATTOX
Attorney General of Texas

LAURA S. MARTIN
Assistant Attorney General
P. O. Box 12548
Austin, Texas 78711
(512) 475-3131

MIKE DRISCOLL
County Attorney
Harris County, Texas

BILLY E. LEE
Assistant County Attorney
1001 Preston, Suite 634
Houston, Texas 77002
(713) 221-5101

Attorneys for Appellees

CERTIFICATE OF SERVICE

This is to certify that on this 8th day of March, 1983, I served three copies of the Motion to Dismiss or Affirm on Patricia Small Burroughs, Esq., counsel of record for Appellant, by depositing the document in a United States mailbox, with first class postage prepaid, addressed to said counsel at her post office address, 7303 Hillcroft, Suite 53, Houston, Texas 77081.

Billy E. Lee

BILLY E. LEE
Assistant County Attorney

Office-Supreme Court, U.S.
FILED
MAR 21 1983
ALEXANDER L. STEVAS,
CLERK

NO. 82-1093

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

LUKE WILLIAM ABLE, JR. doing business as the Criminal Defense Clinic; Able Bail, Defense, and Divorce Clinic; and Able Bail and Defense Clinic,

Appellant,

v.

THE STATE OF TEXAS; JACK HEARD; C.R. GAINES; and HARRIS COUNTY,

Appellees.

APPENDIX ACCOMPANYING BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

Patricia Small Burroughs
7303 Hillcroft, Suite 53
Houston, Texas 77081
713-777-0744

Attorney for Appellant

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Art. 2372p-3. Licensing and regulation of bail bondsmen.

Declaration of policy

Section 1. The business of executing bail bonds is delcared to be a business affecting the public interest. It is declared to be the policy of this state to provide reasonable regulation to the end that the right of bail be preserved and implemented by just and practical procedures governing the giving or making of bail bond and other security to guarantee appearance of the accused.

Defination

Sec. 2. In this Act:

(1) "Person" means an individual or corporation.

(2) "Bondsman" means any person who for hire or for any compensation deposits any cash or bonds or other securities, or executes as surety or cosurety any bond for other persons.

(3) "Bonding Business" means the occupation in which a bondsman is engaged.

(4) "Company" includes corporations and other business entities.

(5) "Bond" includes cash deposit and any similar deposit or written undertaking to assure appearance.

(6) "Board" means the County Bail Bond Board.

Licensing requirement and eligibility

Sec. 3. The provisions of this Act

apply only to the execution of bail bonds in counties having a population of more than 110,000 according to the last federal census or in counties of less than 110,000 where a board has been created. The Creation of the board is within the discretion of a majority of the officers of the county who would be members of, or who would designate members of, the board as provided under Subsection (b) of this section.

(a) In a county that has a board, no person may act as a bondsman except:

(1) persons licensed under this Act, and

(2) persons licensed to practice law in this state who meet the requirements set forth in Subsection (e) of Section 3 of this Act.

(b) No individual is eligible for a license under this Act unless the individual:

(1) is a resident of this state and

(2) is at least 18 years of age;

(3) possesses sufficient financial resources to provide indemnity against loss on such obligations as he may undertake as required by Section 6 of this Article.

(c) No person shall be eligible for a license under this Act, who after the effective date of this Act, commits an offense for which he is finally convicted, such offense being a felony or a misdemeanor involving moral turpitude.

(d) No corporation is eligible to be licensed unless:

(1) it is chartered and admitted to do business in this State; and

(2) it is qualified to write

fidelity, guaranty and surety bonds under the Texas Insurance Code, as amended.

(e) Persons licensed to practice law in this state may execute bail bonds or act as sureties for persons they actually represent in criminal cases without being licensed under this Act, but they are prohibited from engaging in the practices made the basis for revocation of license under this Act and if found by the sheriff to have violated any term of this Act, may not qualify thereafter under the exception provided in this subsection unless and until they come into compliance with those practices made the basis of revocation under this Act. Notwithstanding any other provision of this subsection, no person licensed to practice law shall be relieved of liability on a bail bond he has executed for the sole reason that he has not been employed to represent the principal on the merits of the case if he has been paid a fee for the execution of the bail bond.

Records required of licensees

Sec. 4. (a) A bondsman licensed under this Act shall maintain a record of each bond on which the bondsman appears as surety and shall maintain a separate set of records for each county in which the bondsman is licensed. The records shall include the following information for each bond executed and enforced:

(1) the style and number of the cause in which the bond is given and the

court in which it is executed;

(2) the name of the defendant released on bond;

(3) the amount of bail set in the case; and

(4) the amount and type of security held by the bondsman, together with a statement as to whether the security was taken for payment of a bail bond fee or for assurance of the principal's appearance in court and the conditions under which the security will be returned. No security shall be held for both the payment of a bail bond fee and assurance of the principal's appearance in court that is in excess of the particular risk involved.

(b) The records shall be submitted to the board or a person designated by the board for inspection prior to each renewal of the bondsman's license and shall be available for inspection on demand by the board or its authorized representative.

County Bail Bond Board

Sec. 5. (a) There is hereby created in all counties having a population of 110,000 or more, according to the last preceding federal census, a County Bail Bond Board. In counties of less than 110,000, the creation of the board is within the discretion of a majority of the officers of the county who would be of, or who would designate members of, the board as provided under Subsection (b) of this section.

(b) The County Bail Bond Board

shall be composed of the following persons:

(1) the county sheriff or his designee;

(2) a district judge of the county having jurisdiction over criminal matters designated by the presiding judge of the administrative judicial district;

(3) the county judge or a member of the commissioners court designated by the county judge;

(4) a judge of a county court or a county court at law in the county having jurisdiction over criminal matters

(5) the district attorney or his designee;

(6) a licensed bondsman, licensed in the county, elected by other county licensees; and

(7) a justice of the peace

(c) The board shall meet with within 60 days after its creation. The board shall initially elect one of its members as chairman who shall preside at all meetings to be held thereafter at the call of the chairman.

(d) Four members of the board shall constitute a quorum for the conduct of business. All action by the board shall require the vote of a majority of the members present. The board shall meet at least every 30 days.

(e) Unless clearly not required by this Act, all rules, regulations, and actions of the board passed pursuant to this Act

shall be posted at an appropriate place in the courthouse for a period of 10 days prior to their effective date.

(f) In addition to the powers and duties given to the County Bail Bond Board by this Act, the board has the following powers and duties;

(1) To exercise any powers incidental or necessary to the administration of this Act, to supervise and regulate all phases of the bonding business and enforce this Act, within the county, and to prescribe and post any rules necessary to implement this Act;

(2) To conduct hearings and investigations and make determinations respecting the issuance, refusal, suspension, or revocation of licenses to bondsmen within the provisions of this Act and to issue licenses to those applicants who qualify under the terms of this Act, to refuse licenses to those applicants who do not qualify, and to suspend or revoke the licenses of licensees who commit violations under this Act or the rules prescribed by the board under this Act;

(3) To require applicants and licensees to appear before the board, and to administer oaths, examine witnesses, and compel the production of pertinent books, accounts, records, and testimony by the licensee or applicant in its hearings;

(4) To cause records and transcripts to be made of all its proceedings;

(5) To maintain records and minutes and otherwise operate its office affairs;

(6) To employ such employees to

assist the board in its functions as necessary;

(7) To furnish and post in each court in the country having jurisdiction of criminal cases and each local official responsible for the detention of prisoners in the county with current lists of the bondsmen and their agents licensed and approved in the county and to notify immediately each court and local offical when a bondsman's license is suspended or revoked or an agent's authority is rescinded; and

(8) To file reports and furnish information on the operation of the bonding business in the county at the request of the Texas Judicial Council which shall report annually to the governor and the legislature on or before December 1 of each year on the operation of the bonding business in the state.

Application and Issuance of license

Sec. 6. (a) Any person desiring to act as a bondsman in any court of the county shall file with the County Bail Bond Board a sworn application for a license. The application shall be in such form and shall contain such information as the board may prescribe including the following:

(1) The name, age, and address of the applicant, and if the applicant is a surety corporation, and whether chartered or admitted to do business in this state and qualified to write fidelity,

guaranty, and surety bonds under the Texas Insurance Code, as amended;

(2) The name under which the business shall be conducted;

(3) The name of the place or places, including street address and city, wherein the business is to be conducted;

(4) A statement listing any non-exempt real estate owned by the applicant that the applicant intends to convey in trust to the board to secure payment of any obligations incurred by the applicant in the bonding business if the license is granted. The following shall be included for each parcel listed:

(A) a legal description equivalent to the description required to convey the property by general warranty deed;

(B) current statements from each taxing unit with power to assess or collect taxes against the property indicating that there are no outstanding tax liens against the property and indicating the net value of the property according to the current appraisal made by a member of the Society of Real Estate Advisors or a Member of Appraisal Institute, accompanied by a statement from the applicant agreeing to keep all taxes paid on the property while it remains in trust;

(C) a statement of the applicant that he will not further encumber the property after conveying it in trust to the County Bail Bond Board, without notifying and obtaining the permission of the board;

(D) an agreement to insure and keep

current the insurance on any improvements on the property against any damage or destruction while the property remains in trust, in the full amount of the value claimed for the improvements;

(E) a statement indicating whether the applicant is married and, if so, a sworn statement from the spouse agreeing to transfer to the board, as a part of the trust, any right, title or interest that the spouce may have in the property; and the spouse must execute the deeds of trust to any community property placed in the security deposit required under this section;

(5) A statement indicating the amount of cash or cash value of any certificate of deposit or cashier's checks which the applicant intends to place on deposit with the county treasurer to secure payment of any obligations incurred by the applicant in the bonding business if the license is granted;

(6) A complete, sworn financial statement;

(7) A declaration by the applicant that he will comply with this Act and the rules prescribed by the board.

(b) The application of an individual for a license under this Act shall be accompanied by letters of recommendation from three reputable persons who have known the applicant for a period of at least three years. If the applicant is a corporation, the letters shall be required for the person to be in charge of its business in the county.

Each letter shall recommend the applicant or person who will be in charge of its business as having a reputation of honesty, truthfulness, fair dealing, and competency and shall recommend that the license be granted. If the applicant or person in charge of its business has been licensed under this Act in another county, the application shall be accompanied by a letter from each appropriate board stating whether or not the applicant is in good standing in the county where he is licensed.

(c) The application shall be accompanied by a fee of $500.00 for the filing of any original application, a photograph of the applicant, and a set of fingerprints of the applicant taken by a law enforcement officer designated by the board.

(d) Prior to a hearing on the application, the board or its authorized representative shall conduct necessary inquiries to determine whether the applicant possesses the financial responsibility and meets other requirements of this Act.

(e) A hearing shall be held on the application after the board conducts the inquiries required by Subsection (d) of this section. The board may submit any questions to the applicant and the applicant's agents relevant to its ruling on the application, and the applicant is entitled to present oral and documentary evidence to the board. If, after the hearing, the board is satisfied that no grounds exist on which to refuse the application, the board shall enter an

order tentatively approving the application subject to the application being perfected by the filing of the security deposits required of licensees under this Act. If the board is not so satisfied, it shall enter an order refusing the license.

(f) Upon notice from the board that the application has been tentatively approved, the applicant shall then:

(1) deposit with the county treasurer of the county in which the license is to be issued a cashier's check, certificate of deposit, cash, or cash equivalent in the amount indicated by the applicant under Subdivision (5) of Subsection (a) of Section 6 of this Act but in no event less than $5000.00 to be held in a special fund to be called the bail security fund; or

(2) execute in trust to the board deeds to the property listed by the applicant under Subdivision (4) of Subsection (a) of Section 6 of this Act, which property shall be valued in the amount indicated on an appraisal by a member of the Society of Real Estate Advisors or a Member of Appraisal Institute of the county in which it is located, but in no event less than $10,000 valuation, the condition of the trust being that the property may be sold to satisfy any final judgment forfeitures that may be made in bonds on which the licensee is surety after such notice and upon such conditions as are required by the Code of Criminal Procedure, 1965, as amended in bond forfeiture cases; the board shall file the

deeds of trust in the records of each county in which the property is located, and the applicant shall pay the filing fees.

(3) If the licensee is a corporation, it shall furnish to the sheriff an irrevocable letter of credit as a cash equivalent to satisfy any final judgment of forfeiture that may be made on any bonds on which the corporate licensee is surety.

(g) No bondsman may execute, in any county, bail bonds that in the aggregate exceed 10 times the value of the property held as security on deposit or in trust under Subsection (f) of this section. A county officer or employee designated by the board shall maintain a current total of the bondsman's potential liability on bonds in force, and no further bonds may be written by or accepted from the bondsman when the limit is reached. When a bondsman's total liability on judgments nisi reaches two times the same amount as he has on deposit as security, no further bonds may be written until the bondsman posts additional security as required by this subsection. A bondsman whose license is effective may, at any time, by posting additional security, increase the bondsman's limit.

(h) The cash deposit or the funds realized from the trust shall be used to pay the final judgments of any bail forfeitures that result from the licensee's execution of a bail bond, if the licensee fails to satisfy the judgment within 30 days after a final

judgment of forfeiture. When any sums are depleted from the deposit or trust to pay a judgment resulting from a forfeited bond, the licensee shall, as a condition to continuing as a licensee, replenish the amount so depleted up to the amount of the required minimun deposit to secure other bonds in force. When the licensee ceases to engage in the business of executing bail bonds and ceases to maintain his license, he may withdraw his security deposit or trust upon presentment of a release by the board, if there are no judgment or bond liabilities, either actual or potential, outstanding against the license. Any portion of the deposit or trust not used to pay judgments or to secure unexpired obligations on existing bonds in force shall be returned to the licensee or his heirs or assigns upon presentment of a release by the board.

Corporation as surety

Sec. 7. (a) Wherever in this Act any person is required or authorized to give or execute any bail bond, such bail bond may be given or executed by such principal and any corporation authorized by law to act as surety. When any such corporation authorized by law to act as a surety undertakes to be a surety on a bail bond, such corporation, before being acceptable as a surety on a bail bond, shall be required to meet the applicable requirements prescribed by Section 6 of this Act before being acceptable as a personal surety on a bail bond; Subsection (g) of Section 6 does not apply to a corporate surety.

(b) The certificate of authority to do business in this state issued to a corporation by the State Board of Insurance pursuant to Article 8.20, Insurance

Code, as amended, shall be conclusive evidence as to the sufficiency of the security, the corporation's solvency, or its credits.

(c) Any corporation which acts as a surety shall, before executing any bail bond, first file in the office of the county clerk of the county where such bail bond is given a power of attorney designating and authorizing the named agent of such corporation to execute such bail bonds by such agent. This power of attorney shall be a valid and binding obligation of the corporation. A separate license is required for each agent operating under a corporate power of attorney.

(d) Notwithstanding any statutory requirements to the contrary, any agent so designated and licensed or approved hereunder for the purpose of writing bail bonds shall not be required to be licensed as a local recording agent as defined in Article 2.14, Texas Insurance Code, as amended, for the purpose of this Act.

(e) It shall be the duty of the board to notify promptly the State Board of Insurance of default by a corporation on any financial obligation which it undertakes in the county.

Expiration and renewal of license

Sec. 8. (a) A license issued under this Act expires 24 months after the date of its issuance and may not be renewed unless an application for renewal is filed with the board at least 30 days

before expiration. The application for renewal shall have the same form and content as an application for an original license under this Act. The application for renewal shall be accompanied by a renewal fee of $500.00. If the applicant's current license has not been suspended or revoked, if the renewal application complies with the requirements of this Act, and if the board knows no legal reason why the application should not be renewed, the license may then be renewed for a period of 24 months from the date of expiration and may be renewed subsequently each 24 months in like manner.

(b) All fees collected by the board shall be deposited in the general fund of the county for use in the administration of this Act. The board is authorized to receive disbursements from the general fund for reasonable expenses incurred in the enforcement of this Act, but service on the board is considered an additional duty of office, and the members of the board are not entitled to compensation for the service but only to reimbursement of any expenses actually incurred as a result of the service.

(c) Each license, when issued, shall show on its face the date of expiration and license number, and it shall be the responsibility of the licensee to file for renewal under the terms of this Act, and each subsequent renewal license shall have the same number as assigned to the original license.

Refusal, suspension, and revocation of licenses

Sec. 9. (a) No license may be issued to any person who has not complied with the requirements of this Act for applying for an original or renewal license.

(b) The board may, on its own motion, and shall, on receipt of a sworn complaint providing reasonable cause to believe that a violation of this Act has occurred or on the request of a court, investigate the actions and records relating to such complaint against any bondsman it has licensed. The board may, after notice and hearing, suspend or revoke a license for:

(1) violation of a provision of this Act or a rule prescribed by the board during the term of the license sought to be suspended or revoked or during any prior licensing period;

(2) fraudulently obtaining a license under the provisions of this Act, making a false statement or misrepresentation in an application for an original or renewal license or in any hearing before the board, or refusing to answer any question submitted by the board in a hearing relevant to the license or the conduct or qualifications of the licensee or applicant;

(3) final conviction under the laws of this or any other state or the United States of a misdemeanor involving moral turpitude or a felony committed after the effective date of this Act;

(4) being adjudged bankrupt or

becomming insolvent;

(5) being adjudged mentally incompentent;

(6) failing to pay within 30 days any final judgment rendered on any forfeited bond in any court of competent jurisdiction within the county of the licensee;

(7) paying of commissions or fees or dividing commissions or fees or offering to pay or divide commissions or fees with any person, company, firm, or corporation not licensed under this Act to execute bonds;

(8) soliciting bail bond business in any building where prisoners are processed or confined;

(9) recommending to any client the employment of a particular attorney or firm of attorneys in a criminal case;

(10) falsifying any record required to be maintained under this Act, failing to keep the records, or failing promptly to permit the inspection of the records at any time requested by the board or its representatives or agents;

(11) operating as a bondsman while the license is suspended or after it has expired and before it is renewed; and

(12) on more than one occasion failing to maintain the minimum amount of security required by this Act or misrepresenting to any offical or employee of the offical the limit supported by the amount of security to obtain the release of any person on bond.

Procedure for suspension or revocation of license

Sec. 10. (a) The board may revoke or suspend a license in accordance with the procedure provided in this section for the violation of any provision of this Act.

(b) Notice of a hearing to suspend or revoke shall be given by certified mail addressed to the last known address of the licensee at least 10 days prior to a date set for the hearing.

(c) The notice shall specify the charges of violation of this Act made against the licensee, and no other charges shall be made at the hearing pursuant to the notice.

(d) The hearing shall afford the licensee opportunity to be heard, to present witnesses in his behalf, and to question witnesses against him.

(e) A record of the hearing shall be made. It shall be made available to the licensee on his request subject to his paying reasonable costs of transcription..

(f) If the licensee fails to maintain the security deposit at the proper ratio required by this Act, under Subsection (g) of Section 6 of this Act, the board shall immediately suspend the license while the violation continues. No prior notice or hearing is necessary. Once the proper ratio is regained, the suspension shall be immediately lifted. The board shall revoke the license without prior notice or hearing if the

licensee fails to pay any final judgment connected with the licensee's bonding business within 30 days and there is not sufficient property held as security to satisfy the final judgment.

Court review

Sec. 11. An appeal may be taken from any board's order revoking, suspending, or refusing to issue license. The appeal must made within 30 days after written notice of the suspension, revocation, or refusal by filing a petition in a district court in the county in which the license is issued or refused. If no appeal is taken within 30 days after written notice of suspension, revocation, or refusal, such action shall become final. An appeal shall be by trial de novo, as in proceedings appealed from justice to county court. The decision of the board shall have full force and effect pending the determination of the appeal. All appeals taken from action of the board shall be against the board and not against the members individually.

Surrender of principal

Sec. 12. (a) No peron who executes a bail bond as a surety for a principal may surrender the principal without the written permission of the judge having jurisdiction of the case after the person who executed the bail bond has executed an affidavit to be filed with the clerk of the court stating;

(1) the date the bond was made;
(2) the fee paid for the bond; and
(3) the reason for the surrender..

(b) If the reason for surrender is deemed without reasonable cause by the principal, any agent of the board, or any attorney representing the state or any accused in the proceeding, that person may bring the matter to the attention of the court.

(c) If the court determines that the person who surrendered the principal did so without reasonable cause, the court in its discretion may require that all or a part of the fees paid as a condition for making the bail bond shall be returned to the principal. In making the determination the court shall determine what fees, whether denominated fees for the making of the bond or not, were in fact paid for the purpose of inducing the surety to make the bond.

(d) Notwithstanding any statute required to the contrary of any provision in the bond, the court may not require or commit the surety to remain during any appeal of the case without previous approval of the surety. When a case is appealed without approval of the surety, the bail shall be discharged. Nothing shall deny the principal any right to an appeal bond as provided in the Code of Criminal Procedure, 1965, as amended.

Remittitur of forfeited bonds

Sec. 13. (a) Prior to final judgment on any forfeiture in a criminal case the attorney for the state may recommend to the court settlement for an

amount less than that stated in the bond, or the court may upon its own motion approve such settlement.

(b) After a forfeiture, if the defendant is incarcerated within two years of a judgment nisi, the bondsman shall be entitled to a remittitur of at least 95 percent if he presents a sworn affidavit stating that the defendant was returned to custody, in part, as a result of money spent or information furnished by the bondsman.

The remittitur shall be credited against an unpaid judgment of forfeiture or if the judgment has been paid, the treasurer shall refund at least 95 percent.

(c) The surety on appearance bonds in criminal cases shall be absolved of all liability upon disposition of the case, and disposition as used herein shall mean a dismissal, acquittal, or finding of guilty on the charges made the basis of the bond.

Approval of bond

Sec. 14 (a) In any county or district case in which the posting of bond is required as a condition of release, the sheriff shall accept or approve a bond posted by a licensed bondsman only in accordance with this Act and the rules prescribed by the board, but a sheriff may not refuse to accept a bail bond from a licensed bondsman who meets the requirements of Subdivision (4) or (5) of Subsection (a) of Section 6 of this Act.

Effect of default by corporation

Sec. 14A. (a) Notwithstanding any law to the contrary, a corporation that is in default on five or more bail bonds in a county may not act as a bail bondsman in that county.

(b) The clerk of the court in which the corporation is in default on a bail bond shall deliver a written notice of the default to the sheriff, chief of police, or other appropriate peace officer in the county in which the bond is forfeited.

(c) A corporation is considered in default on a bail bond from the time the trial court enters its final judgment on the scire facias until the judgment is satisfied or set aside.

(d) For purposes of this section, a corporation is not considered in default on a bond if it deposits with the appropriate court cash in the full amount of the judgment, pending appeal. The deposit shall be applied to the payment of any final judgment in the case.

Acts subject to penalty

Sec. 15. (a) No person required to be licensed under this Act may execute a bail bond without a license.

(b) No bondsman or agent of a bondsman may, by any means, recommend or suggest to any person whose bail bond has been posted the name of any particular attorney or firm of attorneys for employment in connection with a criminal offense.

(c) No person in the bonding business shall, either directly or indirectly, give, donate, lend, contribute, or promise to give, donate, lend, or contribute any money or property to any attorney, police officer, sheriff, or deputy, constable, jailer, or employee of a law enforcement agency for the referral of bail bond business.

(e) No police officer, sheriff, or deputy, constable, jailer, or public offical, or employee of a related agency may recommend to any person or persons, family of such person or persons, friends, relatives, or employer the name of any particular bondsman. In all places where prisoners are examined, processed, or confined, a list of licensed bondsmen of that county may be displayed.

(f) No bondsman or agent of a bondsman may solicit business in a police station, jail, prison, detention facility, or other place where persons in the custody of law enforcement officals are detained.

(g) No person may advertise as a bondsman who does not hold a valid license under this Act.

(h) No bondsman or agent of a bondsman may receive money or other consideration or thing of value for issuance of a bond or undertaking of a surety obligation without issuing a receipt indicating the name of the person paying the money or transferring the property, the amount received or the estimated value of the property received

and briefly identifying it, the suit, action, or matter for which it is received or is to be applied, and the name of the person receiving it. The bondsman or agent shall retain a duplicate copy of the receipt which shall be available for inspection by representatives of the board of any county in which the bondsman is licensed or by the appointed represnetatives of a court in which the bondsman agrees to make bail or undertake other surety obligations.

(i) No person shall falsify any records required to be kept by this Act.

(j) A person who violates Subsection (a) or (g) of this section shall be guilty of a Class C misdemeanor.

(k) A person who violates Subsection (b), (e), (f), (h), or (i) of this section shall be guilty of a Class B misdemeanor.

(l) A person who violates Subsection (c) or (d) of this section shall be guilty of a Class A misdemeanor.

Acts 1973, 63rd Leg.,p. 1520, ch. 550, eff. Aug 27, 1973. Secs. 3(c), 5(a) and 12(b) amended by Acts 1975, 64th Leg., p. 1194, ch. 451, §§ 1 to 3, eff. June 19, 1975; Acts 1979, 66th Leg., p. 202, ch. 111, §§ 1 to 3, eff. Aug 27, 1979. Amended by Acts 1981, 67th Leg., p. 875, ch. 312, § 1, eff. Aug. 31, 1981.

SEE THE NEXT PAGE FOR CLASS A, B, & C MISDEMEANOR PUNISHMENTS

Texas Penal Code.

SUBCHAPTER B. ORDINARY MISDEMEANOR PUNISHMENTS

§ 12.21. Class A Misdemeanor

An individual adjudged guilty of a Class A misdemeanor shall be punished by:

(1) a fine not to exceed $2,000;

(2) confinement in jail for a term not to exceed one year; or

(3) both such fine and imprisonment.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 12.22. Class B Misdemeanor

An individual adjudged guilty of a Class B misdemeanor shall be punished by:

(1) a fine not to exceed $1,000;

(2) confinement in jail for a term not to exceed 180 days; or

(3) both such fine and imprisonment.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 12.23. Class C Misdemeanor

An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed $200.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 12.24 to 12.30 reserved for expansion]